DRAFT LAND DISPOSITION AGREEMENT

BETWEEN

THE
CITY OF ANSONIA

AND

PRIMROSE COMPANIES REALTY, LLC.

June 2022
LAND DISPOSITION AGREEMENT

THIS LAND DISPOSITION AGREEMENT (this “Agreement”) is made this ___ day of June, 2022, by and between the CITY OF ANSONIA, a municipal corporation, having an address of 253 Main Street, Ansonia, Connecticut 06401 (the “City”) and PRIMROSE COMPANIES REALTY, LLC, a Connecticut Limited Liability Company, having an address of 1425 Noble Avenue, Bridgeport, 06610 (the “Developer”).

RECITALS:

WHEREAS, on August 18, 2019, the City published a Request for Proposals soliciting proposals for the redevelopment of 31-105 and 106-165 Olson Drive (“the Olson Drive Property”); and

WHEREAS, the Developer submitted a response to the City’s Request for Proposals in which it proposed the development of a multi-sport complex on the Olson Drive Property (“the Project”), more specifically described and illustrated in Schedule A-2; and

WHEREAS, on October 8, 2019, the City’s legislative authority, the Ansonia Board of Aldermen commenced a negotiation with the Developer relative to the redevelopment and disposition of the Olson Drive Property; and

WHEREAS, the City and the Developer, in connection with the Project, have negotiated the terms on which they would mutually agree that the City would convey the Olson Drive Properties to the Developer (hereinafter referred to as “the City Owned Properties” or “City-Owned-Properties” or “the Property” or “the Properties”) which conveyed parcels shall be developed by the Developer in accordance with, and subject to, inter alia, the terms and conditions of a Land Disposition Agreement, to be entered into by and between the City and the Developer; and

WHEREAS, in furtherance of the foregoing, the City and the Developer have now entered into this Agreement;

NOW, THEREFORE, in consideration of the foregoing, and of the representations, warranties, covenants, agreements, and obligations of the parties contained herein, and for Five Hundred and Ten Thousand Dollars ($510,000.00) Dollar and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the parties hereto do hereby mutually agree as follows:

ARTICLE I

DEFINITIONS
For the purpose of this Agreement, the following terms shall have the meanings assigned to them below:

“Affiliate” shall mean an entity that owns a majority and controlling interest in the Developer or an entity as to which the Developer owns a majority and controlling equity interest, or which John Guedes holds a majority or controlling interest.

“Agreement” shall mean this Land Disposition Agreement between the City and the Developer, together with all documents, Exhibits and Schedules referred to, incorporated herein, or annexed or to be annexed hereto, all of which together form the complete agreement among the parties.

“Certificate of Occupancy” shall mean a temporary or permanent certificate of occupancy for the Improvements required under Connecticut law, provided, however, that all conditions or incomplete items of work resulting in the issuance of a “temporary” certificate of occupancy are certified by the Developer’s architect as: (a) normal and customary for projects similar to the Project, in size, type and use; (b) capable of being satisfied or completed by the Developer within a reasonable period of time; and (c) do not cause any material interference with the Developer’s use and operation of the Project, including, without limitation, the Developer’s full and uninterrupted use of the Project for a multi-sports complex, with associated parking, at the City Owned Properties.

“City” shall mean the City of Ansonia, acting through its mayor or other duly-authorized administrative officer, including its elected officials, officers, executives, administrators, employees, agents, and any successor in interest, whether by act of a party or parties to this Agreement, by operation of law or otherwise, but not including City employees or officials acting in their respective statutory capacities (e.g., zoning officials, building officials, health officials and the like).

“Completion Date” shall mean the date that is five (5) months after the date of Substantial Completion, by which the Developer must complete its investment in the Improvements.

“Consent” shall mean the duly authorized, written approval or consent requested by one party to the other, explaining the reasons for requesting such Consent, which Consent by the other party shall not be unreasonably withheld in the exercise of the consenting party’s commercial business judgment.

“Developer” shall mean PRIMROSE COMPANIES REALTY, LLC, its permitted successors in interest, whether by act of a party to this Agreement, by operation of law, or otherwise, but shall not mean (i) a mortgagee of, or a holder of any mortgage, lien or security interest in all or a portion of the Property, and (ii)
any member, manager, employee or agent of PRIMROSE COMPANIES REALTY, LLC.

“Enforcement Period” means a ten (10) year period from the date that the Developer shall have achieved Substantial Completion (as defined in this Article I), with respect to all of the Improvements.

“Environmental Conditions” shall mean any current or future condition that results in or is reasonably likely to result in the Release or migration of Hazardous Materials, alone or in conjunction with other substances, at, upon, under, onto, generated by, emanating or having emanated from, or emitting or having been emitted from, the City Owned Properties in violation of the Environmental Laws.

“Environmental Laws” shall mean all statutory and common federal, state and local laws, rules, orders, regulations, statutes, ordinances, codes, orders, decrees or other requirements of and/or within the jurisdiction of any Governmental Authority, now or at any point in effect and applicable to the City, the Developer, or the Property, and regulating, relating to, or imposing liability for the protection of the environment, or any Polluting Substances, including without limitation the following: The Clean Air Act, 42 USC Section 7401 et seq.; the Clean Water Act, 33 USC Section 1251 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601 et seq. (“CERCLA”); the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act, 42 USC Section 6901, et seq. (“RCRA”); the Toxic Substances Control Act, 15 USC 2601 et seq. (“TCSA”); the Emergency Planning and Community Right to Know Act, 42 USC 11001 et seq.; the Pollution Prevention Act of 1990, 42 USC Section 13101 et seq.; the Occupational Safety and Health Act, 29 USC 651, et seq., (“OSHA”); and Title 22a of the Connecticut General Statutes, as any of them may be amended from time to time.

“Governmental Authority” shall mean any federal, state, or local court, agency, commission, board, bureau, or instrumentality having jurisdiction over any portion of the Project under the Laws.

“Hazardous Materials” shall mean any petroleum, petroleum products, fuel oil, waste oil, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, pollutants, toxic pollutants, herbicides, fungicides, rodenticides, insecticides, contaminants, or pesticides, and including, but not limited to, any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment under the Environmental Laws (defined herein).
“Improvements” shall mean the Developer’s obligations to construct and/or demolish and/or remediate and/or landscape and/or beautify; and to take such other actions, and perform such other activities, all with respect to the Project, and all as set forth in the Plans, or otherwise described in this Agreement, or in documents referenced in this Agreement, including, without limitation, obtaining and complying with all required permits and approvals related to the use and occupancy of such improvements under the Laws, no later than the Completion Date.

“Laws” shall mean all requirements of federal, state and local law, including but not limited to the Environmental Laws, applicable to the Project and the parties, as such laws may be amended from time to time, including all statutory and common law, rules, orders, statutes, regulations, codes, decrees or other legal requirements.

“Plan” or “Plans” shall mean the detailed site plans and illustrations of the Improvements to be completed at the City Owned Properties, which Plans are referenced in Article VI hereof, and on Schedule A-1, attached hereto and made a part hereof.

“Project” shall mean the design and completion of the Improvements on the City Owned Properties in accordance with the Plans and this Agreement.

“Project Cost” shall mean the minimum expenditures committed to the Project by the Developer established in the project budget to be submitted to the City as consideration for the transfer of the Property, such expenditures including soft costs and hard construction costs to complete the Improvements in accordance with the Plan. Such budget shall be attached hereto and become a part hereof as Schedule B.

“Phase One” shall mean the construction of an outdoor soccer field and stadium; completion of one building consisting of approximately 40,000 square feet; and construction of parking on the City Owned Properties necessary to accommodate the field and building.

“Phase Two” shall mean construction of a second consisting of approximately 49,000 square feet, and any additional parking necessary to accommodate the second building.

“Purchase Price” shall mean the purchase price to be paid by the Developer for the City Owned Properties to be conveyed by the City pursuant to this Agreement.
"Release" shall mean any spill, discharge, leak, emission, migration, or other intentional or unintentional release of any Hazardous Materials.

"Remediation" shall mean any and all investigative, mitigation, containment, removal, monitoring, and cleanup activity consistent with and necessary to achieve compliance with the RSRs or other Environmental Laws as a result of the existence of Environmental Conditions.

"Remediation Standards Regulations" or "RSRs" shall mean the provisions of Sections 22a-133k-1, et seq., of the Regulations of Connecticut State Agencies, as they may be amended from time to time.

"Schedule" means a schedule prepared and submitted by the Developer for the completion of the Improvements and the undertaking and completion of the Remediation, if any. The Schedule shall specify the proposed start and finish dates for each Remediation activity and the dates by which certain phases, construction activities and Substantial Completion shall be completed. Such written Schedule shall be delivered to the City no later than thirty (30) days after the date of final approvals.

"Substantial Completion" or "Substantially Complete" shall mean the completion of the Improvements, as evidenced by the issuance of all required, and permanent, certificates of occupancy, covering all of the Improvements, and as further evidenced by an Architect's Certificate (see the form attached hereto, and made as part hereof, as Schedule C) provided by the Developer's architect confirming to the City that the Improvements comply with all Laws, have been completed in accordance with the Plans, and may be used by the Developer for the purposes for which they were intended. Notwithstanding the foregoing, if the Developer has obtained, and has received beneficial use of the City Owned Properties pursuant to, temporary certificates of occupancy, covering the Improvements, together with the required Architect's Certificate, the Developer shall nevertheless be considered to have achieved Substantial Completion, so long as the completion of any additional items necessary to obtain permanent certificates of occupancy (a) are normal and customary for projects similar to the Improvements in size and type; (b) are capable of being satisfied or completed by the Developer within a reasonable time period, not to exceed two (2) months; and (c) will not cause any material interference with the use and operation of the Improvements.

"Transfer Act" means Connecticut General Statutes Sections 22a-134 et. seq., as amended to date. To the City's knowledge, the City Owned Properties are not subject to the Transfer Act.

"Use Restriction" shall mean the Developer's commitment to use the Property in accordance with the terms and conditions of this Agreement, including, without limitation, Section 3.2 hereof, during the Enforcement Period.
ARTICLE II

CONDITION OF PROPERTY
TO BE CONVEYED

SECTION 2.1 Conveyance of the Parcels Comprising the City Owned Properties. The City represents that it is well-seized of the City Owned Properties, in fee simple, has good right to convey the same, and shall convey marketable title to the City Owned Properties to the Developer at the closing. The deed(s) to be delivered by the City shall be a warranty deed or deeds (collectively, the "Deed"). The Deed shall be in proper form for recording, and shall be duly executed and acknowledged, so as to convey to the Developer the fee simple interest in the City Owned Properties, subject to the Permitted Encumbrances.

(a) Conveyance of the City Owned Properties. The City and the Developer have agreed to the terms and conditions under which the City shall transfer title to the City Owned Properties to the Developer, as more particularly set forth in this Agreement. The conveyance shall also include:

(i) All right, title and interest of the City in and to any strips and gores of land adjoining the City Owned Properties, and any land lying in the bed of any street, road or avenue opened or proposed, in front of or adjoining the City Owned Properties, to the center line thereof, and all right, title and interest of the City in and to any award made or to be made in lieu thereof and in and to any unpaid award for damage to the City Owned Properties by reason of change of grade of any street; and the City will execute and deliver to the Developer, at the closing of title, or thereafter on demand, all proper instruments for the conveyance of such title and the assignment and collection of any such award. This provision shall survive the transfer of title to the City Owned Properties.

(ii) All improvements to the City Owned Properties presently existing, and all fixtures, equipment, furniture, furnishings, fittings and articles of personal property attached, or affixed to, or located on and used or employed in connection with, the City Owned Properties, and owned by the City, are included in this conveyance.

(b) Consideration. In consideration of the representations, warranties, covenants, agreements and obligations of the City and the Developer contained herein, and for Five Hundred and Ten Thousand Dollars ($510,000.00) Dollars and other good and valuable consideration upon closing, the receipt and sufficiency of which are hereby acknowledged, the City has agreed to convey and transfer to the Developer, and the Developer has agreed to acquire from the City, the City Owned Properties.
(c) **Permitted Encumbrances.** The Developer agrees to accept such title as any reputable title insurance company licensed in the State of Connecticut (the "Title Company") is willing to approve and insure at normal rates, subject only to (i) the exceptions set forth on **Schedule D-1 though D-2**, attached hereto and made a part hereof; (ii) this Agreement, and all terms and conditions hereof, including, without limitation, the right of reversion set forth in Section 5.6 of this Agreement; (iii) the standard printed exceptions in the Title Company's form of policy; and (iv) any other matters of record provided that none of the same shall prohibit, or materially limit, the use of the City Owned Properties for the purposes allowed by this Agreement (collectively, the "**Permitted Encumbrances**").

The Developer shall be obligated to obtain title searches for the City-Owned Properties and shall promptly provide copies of the same to the City. The Developer and the City shall mutually agree to the Permitted Encumbrances promptly thereafter but prior to the Closing Date. If on the Closing Date there exist any liens or encumbrances, with respect to the City Owned Properties, that are not Permitted Encumbrances, which the City is obligated to pay or discharge in order to convey to the Developer such title as is herein provided to be conveyed, the City may satisfy the same at the closing, provided:

(i) The City shall deliver to the Developer at the closing of title instruments in recordable form sufficient to release such liens and encumbrances of record that are not yet released, if any, together with monies sufficient for the cost of recording or filing such instruments; or

(ii) The City's counsel shall deliver to the Developer, not later than five (5) days prior to the Closing Date, current payoff statements from the holders of such liens or encumbrances, with appropriate pay off or wire instructions to pay such liens or encumbrances, and such counsel's letter stating that the City's counsel shall endeavor to obtain releases of such liens and encumbrances within forty-five (45) days after the Closing Date and shall file the same on the Ansonia Land records, pay the appropriate recording fees, and take any and all such other steps as may be reasonably required to remove such liens and encumbrances of record against the Property within such forty-five (45) day period; or

(iii) The Developer, having made arrangements with its Title Company, shall deposit with the Title Company sufficient monies, acceptable to the Title Company, to insure the obtaining and the recording of releases of such liens and encumbrances. The existence of any such liens or encumbrances shall not be deemed objections to title if the City shall comply with the foregoing requirements, and the Title Company shall make no exception from coverage therefor in the title policy issued to the Developer.
(d) **Assessments and Other Charges.** The City shall be responsible for all other assessments, water charges, and sewer rents, which the City is obligated to pay and discharge, which relate to any period prior to the Closing Date, together with any interest, lien fees, penalties and other charges, including reasonable attorneys' fees and costs of collection due thereon.

(e) **Extension of Time to Remove Liens and Encumbrances.** In the event that, on the Closing Date, the City's title to the City-Owned Properties shall be subject to mortgages, liens, encumbrances or objections other than Permitted Encumbrances, or if the Developer shall have any other grounds, permitted by this Agreement, for refusing to close this transaction, and if the Developer shall be unwilling to waive the same and to close this transaction, the City shall have the right to an adjournment of the Closing Date, for a period not to exceed sixty (60) days, and such Closing Date shall be adjourned to a date specified by the City not beyond such sixty (60) day period. If for any reason whatsoever the City shall not have succeeded in removing, remedying or complying with such mortgages, liens, encumbrances, objections or other grounds, subject to Section 2.7 of this Agreement, as encumbrances upon title at the expiration of such adjournment, this Agreement shall be, and be deemed to be, canceled at the option of either the City or the Developer, upon either giving notice to the other. In the event of the cancellation of this Agreement under any of the circumstances referred to in this Subsection, this Agreement shall cease, terminate and come to an end, and neither party hereto shall have any rights, obligations or liabilities against or to the other, except for those items that are stated herein to survive closing, transfer of title, or the earlier termination of this Agreement.

(f) **Determination of Defects in Title.** Nothing shall constitute an encumbrance, lien, objection or other ground for a defect in title for the purposes of this Agreement if the Standards of Title of the Connecticut Bar Association currently in effect recommend that no corrective or curative action is necessary in circumstances substantially similar to those presented by such encumbrance, lien, objection or other ground. No attempt to cure any alleged encumbrance, lien, objection or other ground shall constitute an admission of its validity.

(g) **Closing Affidavit(s).** The City agrees to execute at the closing one or more affidavits verifying the non-existence of mechanic's liens and lien rights, tenancies or rights of occupancy, security interests in personal property included in the sale, if any, updating the facts in any existing survey of the City-Owned Properties, and such other documents, instruments and/or affidavits as the Developer's counsel or its Title Company may reasonably require in connection with this Agreement and the conveyance of the City-Owned Properties.

**SECTION 2.2 Condition of the Property; No Brokers; Merger.**

(a) The City agrees to deliver to the Developer good and marketable title to the City-Owned Properties, and any other property rights appurtenant thereto
and to be conveyed pursuant to the terms hereof, subject to the Permitted Encumbrances.

(b) Except as may otherwise be expressly provided in this Agreement, the conveyance of the City-Owned Properties from the City to the Developer, is made on an "AS IS, WHERE IS, WITH ALL FAULTS" basis, and the City has not made, does not make, and specifically negates and disclaims, any representations, warranties, covenants, promises, agreements or guaranties of any kind, nature, or character whatsoever, express, implied, or statutory, oral or written, including, without limitation, relating to, concerning, or with respect to, the value, nature, quality, or present or future condition or status of any of the City Owned Properties (structural, environmental, mechanical or otherwise), compliance of or with any federal, state, municipal or local statutes, laws, rules, regulations or ordinances of any kind or nature; use, value, current or future lease performance, investment potential, tax ramifications or consequences, income, habitability, liability, profitability, marketability, merchantability or fitness or suitability for any particular purpose, or any other matter with respect to the City Owned Properties. Subsequent to the closing on the City Owned Properties, the City shall not be liable or bound in any manner by any verbal or written statement, representation or information pertaining to the City Owned Properties or the operation thereof furnished by any person, entity, or party, purporting to act on behalf of the City, or otherwise, including, without limitation, any agent, broker or salesperson. The statements and disclaimers made under this Subsection shall survive the closing of title.

(c) The City and the Developer represent and warrant to each other that NO BROKERS OR FINDERS are involved in the transactions evidenced by this Agreement, including the conveyance of the City-Owned Properties to the Developer, and each party is subject to the indemnification requirements of this Agreement if a claim or lawsuit is brought by a broker or finder claiming to be entitled to a fee or other compensation against the other party, which claim has been judicially proven in a court of competent jurisdiction. The indemnifying party shall be entitled to notice and an opportunity to be heard with respect to any such claim. The indemnification contained in this Subsection shall survive the expiration or termination of this Agreement.

SECTION 2.3 Conveyance of the City-Owned Properties to the Developer. The City shall convey title to the City-Owned Properties to the Developer on the Closing Date, pursuant to the terms and conditions of this Agreement.

SECTION 2.4 Agreement To Be Recorded. This Agreement shall be recorded on the Ansonia Land Records, and shall constitute an encumbrance upon the Property during the Enforcement Period.

SECTION 2.5 Environmental Representations and Agreements.
(a) **Environmental Condition of the Property.** The Developer is responsible for obtaining, if desired, environmental site assessments of the parcels constituting the City Owned Properties, and other investigations, tests, analyses, and the like, to determine the Environmental Conditions existing at the Property, if any. The environmental reports that the City has obtained or conducted with respect to the City Owned Properties, if any, are described on Schedule E attached hereto and made a part hereof. The City makes no representations of any kind with respect to any Environmental Conditions that may exist at the City Owned Properties whether described in the reports listed in Schedule E, or not, all which reports have been delivered to the Developer prior to the date of execution of this Agreement.

(b) **Obligations of the Developer.** The Developer shall be responsible for assessing whether there are any Hazardous Materials at the City Owned Properties, and undertakes and agrees to assume all obligations for Environmental Conditions at the Property, upon the closing of title, including, without limitation, any required Remediation, or Transfer Act obligations.

**SECTION 2.6 Inspections.** The Developer has conducted the desired inspections and due diligence inquiries about the Property prior to the execution of this Agreement and, having satisfied itself, has decided to proceed with acquiring the City-Owned Properties.

**SECTION 2.7 Pre-Closing Indemnification.**

**Indemnification.** Prior to the closing on the Property, and subject to the Indemnification agreement made part of this Agreement as Schedule F, which shall expire and be rendered unenforceable after said closing, the Developer, for itself, its contractors and subcontractors in any tier, consultants, employees, agents, successors and assigns, agrees to, and does hereby, defend, indemnify and hold harmless the City, its elected and appointed officials, officers, department heads, employees and agents, from and against any and all claims, damages, liabilities, obligations, and causes of action, of whatsoever kind and nature, including costs and expenses, including reasonable attorneys' and consultants' fees, arising from this Agreement, and the Developer's activities on the Property, prior to the transfer of title to the City-Owned Properties.

**SECTION 2.8 Closing of Title.**

The closing of title will take place on or before June 30, 2022 (the “Closing Date”).

**ARTICLE III**

**USE OF THE PROPERTY**

**RESTRICTIONS AND EASEMENTS**
SECTION 3.1. **Use of the Properties.** The Developer acknowledges that its use of the City Owned Properties are subject to the terms and conditions of this Agreement and the terms and conditions of any and all federal, state and municipal permits and approvals obtained or required in connection with the Project.

SECTION 3.2. **Restrictions On Use of the Properties.** The Developer covenants and agrees for itself, its successors and assigns, and all successors in interest to the City Owned Properties, that the Properties shall be used in accordance with all Laws, for the following purposes and no others, during the Enforcement Period, which purposes and limitations shall constitute the Use Restriction:

(a) The Project and Properties (i) shall be used solely for a multi-sports complex and related and supporting facilities and amenities, consisting of approximately 8.42 acres in total, (ii) shall not be used or devoted in whole or in part to any other purpose, and (iii) shall not be used in a manner inconsistent with, or in violation of, any of the limitations or requirements of this Agreement. All Improvements to the City Owned Properties made pursuant to this Agreement shall be used during the Enforcement Period for the uses permitted by the Use Restriction unless prior written Consent is given by the City for a different or other use or uses. If, at any time, (i) the parties mutually agree, (ii) an administrative agency issues a determination, ruling, notice, or other pronouncement, or (iii) a court of competent jurisdiction makes a final determination binding upon any of the parties, the Project, or the Property, that a use restriction on the Project or the Property imposed by, described in, referred to, or incorporated by reference in this Agreement conflicts with or violates, or will conflict with or violate, a Law, such use restriction shall be modified to the extent necessary to allow such use restriction, and its application to the Project or the Property, to comply with the Law, or, if necessary for the Project or the Property to comply with the Law, such use restriction shall be eliminated, in which case the parties hereto shall cooperate to amend this Agreement, as necessary. If an administrative agency issues a determination, ruling, notice, or other pronouncement, or a court makes a final determination, that a use restriction like, or similar to, any use restriction on the Project or the City Owned Properties conflicts with or violates, or will conflict with or violate, a Law, the parties shall determine whether such use restriction on the Project or the Property should be modified or eliminated in accordance with this Subsection (a).

(b) The Developer shall acquire the City-Owned Properties for the purposes set forth in Subsection (a) above and not for the purposes of mere speculation. The Properties shall not be sold, master leased, or otherwise disposed of, except in accordance with Article IX hereof. Any proposed sale, master lease or disposal of the Properties to a party that is not an Affiliate of the Developer, except for tenant leases or occupancy agreements for portions of the Properties, is subject to the prior written Consent of the City, which Consent the
City may withhold in its sole and absolute discretion. Notwithstanding anything to the contrary contained herein, the Developer, at any time after the closing, may mortgage all or a portion of the City Owned Properties as security for a loan or loans (a "Financing Transaction"), pursuant to, and subject to, the terms of this Agreement.

(c) The Developer, and its successors and permitted assigns, shall not discriminate, or permit discrimination, against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, sex, sexual orientation, or mental or physical disability, in the sale, lease, rental, use or occupancy of the Property, or any Improvements to be erected thereon, or in its employment or contracting practices, shall not effect or execute any agreement, lease, conveyance, or other instrument having a discriminatory intention or effect, and shall comply with all federal, state and local laws, in effect from time to time, prohibiting discrimination. The Developer shall not sell, lease or otherwise convey any interest in, or permit the use or occupancy of, the Property unless the transferee agrees to be bound to the obligations contained in this Subsection.

SECTION 3.4. Developer to Cooperate with the City. The Developer agrees to cooperate fully and in a timely manner with the City with regard to all matters referred to in this Agreement, whether such matters occur before or after the Developer acquires title to the City-Owned Properties.

SECTION 3.5. Covenants Binding Upon Successors in Interest; Duration; Enforcement.

(a) The Developer acknowledges that this Agreement shall constitute a covenant running with the land, and that such covenant shall, in any event, and without regard to technical classification or designation, legal or otherwise, be binding upon the Developer, its successors and assigns, to the fullest extent provided by law and in equity for the benefit of the City. This Agreement shall be enforceable by the City, its successors and assigns, against the Developer, its successors and assigns. This Agreement shall remain in effect for the Enforcement Period.

(b) The Developer agrees that the City, its successors and assigns, are beneficiaries of this Agreement, and that this Agreement is enforceable against the Developer, its successors and assigns.

ARTICLE IV

ACCESS TO PROPERTY

SECTION 4.1 Sign. The Developer shall permit the City to maintain an appropriate 4' x 8' sign on the Property upon the execution of this Agreement, and
until the completion of the Improvements, indicating the City's support for, and involvement in, the Project. The location of such sign shall be subject to the written approval of the Developer, which approval shall not be unreasonably withheld, conditioned or delayed.

SECTION 4.2 Access. During the Enforcement Period, upon receipt of reasonable prior notice to the Developer, the Developer shall permit representatives of the City, its agents, employees and consultants, access to the Property, at all reasonable times, and during normal business hours, as the City deems necessary.

ARTICLE V

COMPLETION OF THE IMPROVEMENTS

SECTION 5.1 Completion of Improvements. In partial consideration for the conveyance of the City-Owned Properties, the Developer agrees to undertake the Improvements on the Property in accordance with the Plans, and to invest and expend as Project Cost not less than $13 million not later than the Completion Date. The City has the right to verify that the Developer will invest the Project Cost in the Property by open-book audit of the Developer's costs and expenses. The City has not made any representations or warranties concerning the condition of the Property, and shall not be responsible for any claim by the Developer for cost overruns, change orders, costs of compliance with land use, building, life, safety, and other code requirements, changes in law, or any additional costs and expenses related to the general condition of the Property, its environmental condition, or to any construction, renovation, use, operation, maintenance, repair or replacement of the buildings, utilities or other structures or improvements located at the Property.

SECTION 5.2 Commencement and Continuation of Operations; Default; Completion of Improvements.

(a) Use Restriction. In consideration for the transfer of the City-Owned Properties, the Developer undertakes and agrees to use the Property solely for the uses permitted by the Use Restriction during the Enforcement Period. In the event of the Developer's failure to meet the requirements of the Use Restriction, the City shall provide written notice to the Developer of the Developer's failure to meet the requirements of the Use Restriction and upon receipt of such notice, the Developer shall be provided a period, not to exceed ninety (90) days, to cure its failure to meet the requirements of the Use Restriction. In addition to any and all other remedies which may be available to the City arising out of such default, whether hereunder or at law or in equity, the Developer hereby agrees, stipulates and
understands, that its failure to comply with the Use Restriction, beyond such ninety (90) day cure period, shall make it liable for the payment of damages in the maximum principal amount of Five Hundred Thousand and No/100 ($500,000.00) Dollars during the Enforcement Period, which penal sum shall decrease by Fifty Thousand ($50,000.00) Dollars for each year that the Developer observes the Use Restriction.

(b) Failure to Complete Improvements. Notwithstanding anything to the contrary set forth in this Agreement, and in addition to any other rights and remedies of the City as set forth in this Agreement, but subject, however, to the force majeure provisions contained in Section 13.1 below, in the event of the unexcused failure of the Developer to timely complete the Improvements by the date of Substantial Completion, the Developer shall be liable for daily damages to the City which shall be considered liquidated damages, and not a penalty, in an amount determined to be Two Thousand Five Hundred and No/100 ($2,500.00) Dollars, per day ("Delay Damages"), for each and every day that the Developer has not achieved Substantial Completion of the Improvements, due to no direct fault of the City, for the loss to the City resulting from the delay in completion, which Delay Damages are understood to compensate the City for added direct and indirect costs and expenses, including but not limited to, increased administrative costs, increased legal and consulting fees, additional temporary services, additional inspection costs, and other expenses, which the parties agree are not capable of calculation. Any such Delay Damages for which the Developer is liable shall be payable within ten (10) days of the Developer’s receipt of written demand therefor.

SECTION 5.3 Time for Commencement and Completion Date. The Developer agrees to complete its investment in making the Improvements, as follows:

(a) The Developer shall be obligated to submit all necessary applications for final approval to all City land use boards and/or commissions, including any third-party applications, required to complete the Improvements set forth on the Plans, and in this Agreement, within sixty (60) days of approval of the Plans.

The timelines for submission of the Plans, and/or any modifications to the Plans, are set forth in Section 6.1 of this Agreement.

The Developer shall be obligated to submit corrected and/or revised applications, as may be required by any City land use board and/or commission, including any third-party application, no later than sixty (60) days after receiving notice that a corrected and/or revised application is required.
(b) The Developer shall commence the Improvements, by obtaining all necessary building permits, within sixty (60) days of the date (the "City Final Approval Date") of the Developer's receipt of final City approvals, including the resolution of any third-party appeals, of all land use applications required to complete the Improvements set forth on the Plans, and in this Agreement.

The City Final Approval Date shall be determined by the City, after reviewing all approvals, and shall be memorialized in a writing from the City to the Developer.

The Developer shall achieve Substantial Completion for Phase One of the Improvements within two (2) years of the City Final Approval Date, and Substantial Completion for Phase Two of the Improvements within five (5) years of the City Final Approval Date.

(c) The Developer shall, at all times, diligently, expeditiously, and continuously, in good faith, pursue completion of all of the Improvements, with respect to the Property, as required by the terms of this Agreement, until Substantial Completion is achieved pursuant to the terms hereof. Acceptable evidence of commencement of construction shall be securing the required building permits needed for the construction and/or renovation of the Improvements. All required applications shall be filed by the Developer in a timely manner, in accordance with the terms of this Agreement.

SECTION 5.4 Construction Schedules; Progress Reports; Meeting Minutes, Etc. The Developer has provided a list of the Improvements to be completed by the Completion Date at the inception of this Agreement, which are included in the Plans attached hereto as Schedule A-1. The Developer shall provide in the ordinary course of the Project, and otherwise make available in the City of Ansonia for inspection and copying during normal business hours, all Project documents, schedules, weekly and monthly construction meeting minutes, progress reports and other items reasonably requested. The Developer shall provide the City with advance notice of all material job and project meetings and shall escort City representatives through the Property during construction and renovation, and after the completion, of the Improvements.

SECTION 5.5 Right of Reversion in favor of City

(a) Notwithstanding anything contained in this Agreement, and in addition to any other rights and remedies of the City as set forth in this Agreement, in the event that the Developer commits an Event of Default under this Agreement, which shall include, without limitation, the Developer's failure to comply with any or all of the deadlines imposed by this Agreement, for commencement or completion of the Improvements, or otherwise, then, in such case, all estate conveyed by the City to the Developer, in and to, the City-Owned Properties shall, at the option of the City, cease and determine; such option to be exercised by the...
recording by the City, on the Ansonia Land Records, of an Exercise of Right of Reversion; and, in such case, title in fee simple to the same shall revert to and become re-vested fully and completely in the City, and the City shall be entitled to, and may, of right, enter upon and take possession of the City-Owned Properties; provided, however, that any such re-vesting of title in the City shall be subject to, and shall not defeat or render invalid:

(i) the lien of any existing mortgages, or deeds of trust, thereon, permitted by this Agreement; and

(ii) any rights or interests provided in this Agreement for the protection of the holders of any such mortgages, or the trustees of any such deeds of trust;

This Right of Reversion shall be a Permitted Encumbrance, and shall be included as a "Subject To" in the Deed(s) conveying the City-Owned Properties to the Developer. In the event of such reversion, as herein set forth, the City shall purchase any properties subject to the Reversion from Developer at a price equal to the fair market value of the Developer's improvements in the reverted property, as determined by the average of two (2) MAI appraisals conducted at the City's sole expense, minus the total value of the tax incentive received on the property.

(b) In the event that the City gives notice to the Developer of a failure to commence or complete the Improvements, or of any other breach of this Agreement, the City shall forthwith furnish to any mortgagees of the Property a copy of such notice. To facilitate the operation of this Section 5.5(b), the Developer shall at all times keep the City provided with an up-to-date list of mortgagees on the Property from whom the Developer has obtained loans for construction or renovation operations. In the event that any such breach is not cured by the Developer, in accordance with any cure periods set forth in this Agreement, the holder of record of any mortgage on the Property may cure any such failure upon giving written notice to the City of its intention to do so within fifteen (15) days after the date of the City's notice to the Developer of such breach. In such case, such mortgagee shall have a period of time to cure such breach, equal to the period of time that the Developer was initially entitled to, pursuant to the terms of this Agreement (the "Mortgagee's Cure Period"), which Mortgagee's Cure Period shall commence on the date of such mortgagee's notice to the City of its intention to effectuate such cure.

ARTICLE VI

PLANS

SECTION 6.1 The Plans referenced in Schedule A-1, attached hereto and made a part hereof, shall be submitted to the Ansonia Planning and Zoning
Commission ("P&Z"), and any other required land use boards, departments, and/or agencies, as necessary in connection with any and all required governmental approvals, local, state or federal, on or before that day that is thirty (30) days after the Closing Date. In the event that the Plans are rejected by P&Z, the Developer shall have sixty (60) days, from the date of such rejection, within which to submit modified Plans. The Plans shall comply with all Laws, including, without limitation, all applicable regulations of the City of Ansonia. Any material modifications to Plans previously approved by the City shall also require the Consent of the City and, if applicable, additional land use approvals relating to such modifications.

ARTICLE VII

COMPLETION OF IMPROVEMENTS
AT DEVELOPER'S EXPENSE

SECTION 7.1 Improvements. The Developer shall undertake and complete the Improvements on the Properties, as described in the Plans and in this Agreement, at its sole cost and expense, in a good and workmanlike manner, and in accordance with all Laws.

SECTION 7.2 Verification of Completion. After the Developer's architect certifies to the City that the Improvements are Substantially Complete, the City shall be entitled to inspect and verify that the Improvements have been completed in accordance with the terms and conditions of this Agreement.

SECTION 7.3 Permits. All federal, state and municipal permits and approvals required by law or pursuant to the terms of this Agreement with regard to the completion of the Improvements, and the use and occupancy of the Property, for the business of the Developer, shall be obtained at the sole cost and expense of the Developer.

ARTICLE VIII

REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 8.1 Representations, Warranties and Covenants of the Developer. The Developer represents, warrants and covenants to the City that:

(a) The acquisition of the Property, and the other undertakings and agreements made under this Agreement, which constitute inducements to the City to enter into this Agreement, are solely for the purpose of the development and use of the Property in accordance with the terms of this Agreement, and that the Property will be used for such purposes during the Enforcement Period. If the Developer transfers its interest in the Property to any party, without the prior written Consent of the City, which Consent
the City may withhold in its sole and absolute discretion, except for assignment to an Affiliate, as may be permitted by Article IX hereof, and the granting of security interests in connection with a Financing Transaction, such transfer shall constitute an Event of Default under this Agreement.

(b) The Developer has full right, power, authority and legal capacity to enter into this Agreement, and no further consents or approvals of any person or entity are necessary in connection with the Developer's execution of, and performance under, this Agreement. The Developer is a New York corporation that is authorized to transact business within the State of Connecticut.

(c) The entry into and performance of this Agreement will not result in, or constitute any breach or violation of, the Developer's organizational documents, or constitute a breach or violation of any Financing Transaction, mortgage, indenture, contract or other agreement or instrument to which the Developer is a party.

(d) No agreement, or provision of applicable law, requires the vote of any other person to authorize or approve the performance by the Developer of its obligations under this Agreement.

(e) Except as provided herein, prior to the Completion Date, the Developer shall not sell, master lease, or otherwise dispose of the Property, or its interest in this Agreement, or a portion thereof, without the prior written Consent of the City, which may be withheld by the City in its sole and absolute discretion.

(f) The Developer shall not discriminate or permit discrimination in the performance of this Agreement against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, sex, sexual orientation, or mental or physical disability, in the sale, lease or rental, or in the use or occupancy of, the Property, or any Improvements erected or to be erected thereon, and shall not effect or execute any agreement, lease, conveyance, or other instrument whereby the Property or any part thereof is restricted on the basis of race, color, religious creed, age, marital status, national origin, sex, or mental or physical disability.

(g) The Developer has not contracted with, and has no obligation to, any broker, finder or other person entitled to a fee or other consideration for obtaining this Agreement, other than the normal costs of conducting business in the ordinary course, and hiring professionals such as lawyers, architects and engineers, and no such person has been involved in this transaction in any way.
(h) No suit or arbitration proceeding is pending or threatened, and there are no outstanding judgments or awards, against the Developer, which would prevent or be likely to hinder the Developer's performance of this Agreement or have a material adverse affect upon the Project or the financial condition or business of the Developer.

SECTION 8.2 Representations, Warranties and Covenants of the City.

The City represents and warrants that:

(a) The City has acquired good and marketable title to the City-Owned Properties.

(b) Prior to completion of the Improvements, so long as the Developer has not committed an Event of Default that continues beyond any applicable grace or cure period provided herein, the City will not change, modify, amend or terminate this Agreement, or take any action that would materially and adversely affect the completion of the Improvements or the intended use of the Property by the Developer.

(c) The Mayor of the City of Ansonia has been duly authorized and has full right, power, authority and legal capacity to enter into and obligate the City to this Agreement, that the execution and delivery of this Agreement has been duly authorized by action of the City's legislative body, and that no further consents or approvals of any person or entity are necessary in connection with the City's execution of this Agreement.

ARTICLE IX

TRANSFERS

SECTION 9.1 The Developer's Right to Transfer or Encumber the Property or any Interest in this Agreement.

(a) The Developer shall not have the right to transfer or encumber the Property or any interest in this Agreement, except as set forth in this Article IX.

(b) The Developer shall have the right, upon prior written notice and full disclosure to the City, to enter into one or more bona fide Financing Transactions. The Developer shall provide to the City written evidence of the consummation of any such Financing Transaction.

(c) The Developer shall have the right, upon prior written notice and full disclosure to the City, and upon receipt of the written Consent of the City, which Consent shall not be unreasonably withheld, conditioned or
delayed, to convey, assign or otherwise transfer all or any portion of its interest in the Property, the Improvements or this Agreement to an Affiliate, provided, however, that no such assignment shall relieve the Developer, or any such successors and assigns, of any of the Developer's obligations under this Agreement.

(d) Notwithstanding anything to the contrary contained herein, any permitted transfer hereunder shall be subject to the satisfaction of each of the following conditions: (i) the transferee shall have (a) proven, related project experience, and (b) credibility, good reputation, and financial ability. The foregoing shall mean that the proposed transferee has proven related project experience and the capability to acquire any necessary financing for development of the Property, as evidenced by a letter from an institutional lender stating the transferee's ability to qualify for, and obtain, its financing for purchase and development; that the proposed transferee is not engaged in criminal, dishonest, unethical or other disreputable activities; that the officers, directors, members, partners and/or owners of such transferee are not considered in the relevant business community to be engaged in or have been engaged in criminal, dishonest, unethical or other disreputable activities within the past ten (10) years; and that such transferee is not in default in payments to the City. In such case, the Developer shall give written notice to the City together with facts and information substantiating that such transfer meets the requirements of this Agreement, subject to the City's satisfaction that such transfer requirements have been met, in the exercise of the City's prudent business judgment, reasonably exercised.

ARTICLE X

INDEMNIFICATION

SECTION 10.1 Developer’s General Indemnification.

(a) The Developer agrees to, and does hereby, indemnify, hold harmless, and defend the City from and against any and all claims, demands, actions, liability, loss, damage or expense, including, without limitation, all reasonable attorneys' and consultants' fees, arising out of the failure or neglect of the Developer to perform and comply with any of the covenants, representations, agreements and obligations arising under this Agreement, or resulting from any material inaccuracy of the representations, warranties, covenants or agreements made to the City in this Agreement, provided, however, that the Developer shall not be responsible or obligated for claims arising out of the gross negligence or willful misconduct of the City, its elected and appointed officials, officers, department heads, employees and agents.
(b) Within thirty (30) days after the City becomes aware of a claim, or after the occurrence of an event giving rise to a claim, by a third party as to which the City is entitled to indemnification hereunder, the City shall promptly give notice to the Developer. Such notice shall contain a brief written description of the facts relating to such claim for indemnification and shall identify or include copies of all relevant documents, pleadings or other evidence relating to the claim for indemnification. The Developer shall, upon giving written notice to the City on or before the tenth (10th) day after receipt of any such claim for indemnification from the City, assume the defense of the matter giving rise to the claim for indemnification at the Developer's sole cost and expense. The Developer shall promptly provide to the City copies of all pleadings, correspondence, settlement offers and other items of significance relating to such claim and agrees to comply promptly, in good faith, and with due diligence, with the requests of the City related to such claims. The Developer shall have no right to compromise or settle such claim unless and until it has disclosed the terms of such settlement and has received the prior written Consent of the City, which Consent shall not be unreasonably withheld, conditioned or delayed. If the City gives its Consent to the compromise or settlement of such claim, the judgment of any court or the award of any arbitrator based upon such compromise or settlement, shall bind all of the parties.

SECTION 10.2 Developer's Environmental Indemnification. The Developer agrees to, and does hereby, indemnify, defend and hold harmless the City from and against any and all liabilities, claims, causes of action, damages, or the like, directly or indirectly, in connection with (i) any Environmental Conditions on, at, under, over, or across, the Property, or in any way affecting the Property, whether arising or emanating from the Property, or from other property; and (ii) any alleged or actual violation of Environmental Laws by the Developer.

The provisions of this indemnification shall govern and control over any inconsistent provision of any other document executed or delivered by the Developer in connection with this Agreement. This environmental indemnification shall survive the expiration of this Agreement, or the earlier termination thereof, and shall be a continuing obligation of the Developer, its successors and assigns, and shall inure to the benefit of the City, its successors and assigns.

ARTICLE XI

PRESERVATION OF IMPROVEMENTS

SECTION 11.1 Maintenance, Repair and Replacement of Improvements. During the Enforcement Period, the Developer shall maintain the Improvements in good condition, promptly making any and all necessary repairs and replacements thereto at its sole cost and expense. The Developer shall keep the Property and the Improvements fully insured against casualty losses at
replacement cost value. In the event any or all of the Improvements shall be partially or totally destroyed, the Developer shall repair or reconstruct the same to the same condition in which such Improvements existed prior to such destruction, reasonable wear and tear and deterioration by the elements excepted, or, at its option, shall construct replacement Improvements of equivalent or greater value at its sole cost and expense within a reasonable period of time following the date of such partial or total destruction, such period of time not, however, to exceed twenty-four (24) months.

ARTICLE XII

EVENTS OF DEFAULT; REMEDIES

SECTION 12.1 Default by the City.

The following events shall constitute an event of default by the City if they continue beyond any applicable grace or cure period provided for in this Agreement (each an “Event of Default”):

If the City shall commit a material breach of any representation or warranty under this Agreement, or if any such representation or warranty shall prove to be untrue in any material respect at the time it was made, or shall become untrue thereafter, in all cases which results in damage to the Developer, and the City fails to cause such representation or warranty to become true within thirty (30) days after its receipt of written notice thereof, or such longer period of time as may be necessary so long as the City diligently commences and continues to seek the correction of such warranty or representation in good faith; or if the City shall breach any material term or covenant of this Agreement, or violate any other term or condition of this Agreement in a consistent or repetitive manner, which results in damage to the Developer; and provided, in all cases, that the Developer is in compliance with this Agreement and has not committed an Event of Default that remains uncured after the expiration of any grace or cure period provided herein, then the Developer may pursue legal remedies against the City which are available to it, for direct damages suffered either at law or in equity, as the Developer deems appropriate, but the Developer may not pursue indirect, consequential or punitive damages.

SECTION 12.2 Developer Remedies Exclusive. The remedies set forth in this Article are intended to be the exclusive remedies for the type of default set forth herein, provided, however, that the Developer understands and agrees that under no circumstances shall it have the right to terminate this Agreement for convenience in the absence of a default by the City that remains uncured after the passage of any applicable grace or cure period that is provided for in this Agreement.
SECTION 12.3 Defaults by the Developer; Remedies.

The following events shall constitute an event of default by the Developer if they continue beyond any applicable grace or cure period provided for in this Agreement (each an "Event of Default"):

(a) If the Developer shall commit a material breach of any representation or warranty under this Agreement, or if any such representation or warranty shall prove to be untrue in any material respect at the time it was made, or shall become untrue thereafter, and the Developer fails to cause such representation or warranty to become true within thirty (30) days after its receipt of written notice thereof, or such longer period of time as may be necessary, if that is not a reasonable time, and the Developer provides justification to support such request for a longer period, so long as the Developer diligently commences and continues to seek the correction of such warranty or representation in good faith; or if the Developer shall breach any material term or covenant of this Agreement, or violate any other term or condition of this Agreement in a consistent or repetitive manner;

(b) If the Developer shall file for bankruptcy or become bankrupt or insolvent, or shall file any debtor protection proceedings in any court pursuant to any statute of the United States, or shall file or have filed against it a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of the assets of the Developer, or if the Developer makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement for the partial satisfaction of its debts, and if any of the aforesaid are not vacated, dismissed or cancelled within sixty (60) days following the date any such event occurs.

(c) If the Developer actually or constructively abandons the Property or the Improvements or gives evidence of its intention to abandon any of them, or otherwise indicates its unwillingness to perform substantially all of its material obligations hereunder.

Upon the occurrence of an Event of Default by the Developer that shall not be cured within thirty (30) days after written notice from the City, then the City, in addition to any other rights and remedies provided for in this Agreement, including, without limitation, the right of reversion set forth in Section 5.5 of this Agreement, shall have all remedies to which it is entitled, at law, or in equity, to protect its interests, which shall include, without limitation, the right to terminate the tax incentive agreement and the right recover damages from the Developer.
12.4 City Remedies Exclusive. The remedies set forth in this Article are intended to be the exclusive remedies for the type of default set forth herein, provided, however, that the City understands and agrees that under no circumstances shall it have the right to terminate this Agreement for convenience in the absence of a default by the Developer that remains uncured after the passage of any applicable grace or cure period provided in this Agreement.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

SECTION 13.1. Force Majeure. The parties hereto, respectively, shall not be in default of this Agreement if such party is unable to fulfill, or is delayed in fulfilling, any of its obligations hereunder, or is prevented or delayed from fulfilling its obligations, in spite of its employment of best efforts and due diligence, as a result of severe weather conditions, natural disasters, catastrophic events, casualties to persons or properties, war, governmental preemption in a national emergency, enactment of law, rule or regulation or change in existing laws, rules or regulations which prevent any party’s ability to perform its respective obligations under this Agreement, or actions by other persons beyond the exclusive control of the party claiming hindrance or delay. If a party believes that a hindrance or delay has occurred, it shall give prompt written notice to the other party of the nature of such hindrance or delay, its effect upon such party’s performance under this Agreement, the action needed to avoid the continuation of such hindrance or delay, and the adverse effects that such hindrance or delay then has or may have in the future on such party’s performance. Notwithstanding notification of a claim of hindrance or delay by one party, such request shall not affect, impair or excuse the other party hereto from the performance of its obligations hereunder unless its performance is impossible, impractical or unduly burdensome or expensive, or cannot effectively be accomplished, without the cooperation of the party claiming delay or hindrance.

SECTION 13.2. Tax Incentive Agreement; Entire Agreement. This Agreement is entered into contemporaneously with a Tax Incentive Agreement, by and between the City and the Developer (hereinafter “the Related Documents”).

The provisions of the Related Documents are hereby made a part of, and incorporated into, this Agreement. Except solely for the Related Documents, this Agreement shall supersede all prior and contemporaneous oral or written representations, statements, agreements and understandings between or among the parties hereto, with respect to the transactions contemplated by this Agreement, that are not specifically contained herein, all of which are merged into this Agreement, which, together with the Related Documents, alone fully and completely expresses their agreement.
SECTION 13.3. **Public Incentive.** The Developer shall provide the following incentives to the City of Ansonia and its residents in connection with the use of any use of the Property as a multi-sport complex during the length of the tax incentive, and shall guarantee that said incentives continue so long as the Property is used as a multi-sport complex:

(i) The developer will require that all leases for the Property provide at least a 10% discount to all Ansonia residents for use of any sports program offered at the Property; and

(ii) The City shall be permitted to utilize the outdoor field space developed at the Property, free of all costs, charges, fees, on up to 10 occasions during the course of each year on dates mutually agreeable to the City, Developer and tenants.

The incentives set forth in this Section shall constitute a material term of this Agreement and shall be recorded on the Ansonia Land Records.

SECTION 13.4. **RIGHT OF FIRST REFUSAL.** The City shall have right of first refusal to purchase the Properties from the Developer upon any offer made to purchase the Property prior or subsequent to the expiration of the Enforcement Period.

SECTION 13.5. **Due Organization and Authority.** The Developer shall cause its legal counsel to deliver a legal opinion in form and content acceptable to the City, prior to the execution of this Agreement, to the effect that: (i) the Developer is a duly formed or duly organized, and validly existing, corporation under the laws of the State of New York, with full authority to transact business in the State of Connecticut; (ii) the officer executing this Agreement on behalf of the Developer is the duly authorized officer of the Developer, and has full right, power, authority and legal capacity to enter into and obligate the Developer to this Agreement; (iii) the execution and delivery of this Agreement, and the performance thereof, has been duly authorized by all necessary corporate action; (iv) the execution of this Agreement by the Developer will not violate any other contract, agreement, arrangement, or other obligation, related to the Developer or to which the Developer is obligated; and (v) no further consents or approvals of any person or entity are necessary in connection with any of the foregoing.

SECTION 13.6. **Notices.** All notices, demands or other communications required or desired pursuant to this Agreement by any party hereto shall be made in writing and shall be deemed sufficiently given or delivered only when (i) mailed by certified mail, return receipt requested, postage prepaid, or (ii) delivered by
nationally recognized overnight courier (such as Federal Express), or (iii) delivered personally, to:

(a) With respect to the Developer:

Primrose Companies Realty, LLC

Attn:

with a copy to:

(b) With respect to the City:

Sheila O'Malley
Economic Development Director
City of Ansonia
253 Main Street
Ansonia, Connecticut 06401

With a copy to:

John P. Marini, Esq.
253 Main Street
Ansonia, CT 06401

Each of the parties hereto shall promptly notify each other in the manner set forth above of any change in their respective addresses or any other address or other person to whom future notices should be sent.

SECTION 13.7. Severability. If any provision of this Agreement shall be held to be invalid by a court of competent jurisdiction, the remaining terms of this Agreement, to the extent not inconsistent with any such holding, shall not be affected thereby if such remaining terms would then continue to conform with the requirements of applicable laws and the provisions of the Plan and this Agreement.

SECTION 13.8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall be deemed to constitute one and the same agreement.
SECTION 13.9. **Waiver.** Any right or remedy which either party or their respective successors or assigns may have under this Agreement may be waived in writing by such party without the execution of a new or supplementary agreement, but any such waiver shall not affect the future exercise of the rights of such party hereunder (to the extent not previously waived in writing) or any other rights of the parties not specifically waived. No waiver of any right or remedy by any party at any one time shall be deemed to be a waiver of any such right or remedy in the future.

SECTION 13.10. **Amendments: Modifications.** This Agreement may be amended or modified only by a written document, duly executed by both of the parties hereto, evidencing their mutual agreement to any such amendment or modification.

SECTION 13.11 **Section Headings.** The descriptive headings of the articles, sections and subsections of this Agreement are for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

SECTION 13.12. **Governing Law.** The respective rights, obligations and remedies of the parties under this Agreement and the interpretation hereof shall be governed by the laws of the State of Connecticut which pertain to agreements made and to be performed in the State of Connecticut.

SECTION 13.13. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 13.14. **Gender; Number.** Whenever used in this Agreement and the context so requires, the singular number shall be include the plural and vice-versa, and the use of the masculine, feminine, or neuter gender shall include any gender required.

SECTION 13.15. **Limitations on Personal or Financial Interest.** No elected representative, official or employee of the City shall participate in any decision relating to this Agreement if such a person has a personal or financial interest or interests, direct or indirect, in the Developer or the Project, and any elected representative, official or employee must disclose in writing to all parties the existence of any formal or informal contract, relationship or understanding, whether oral or written, whether existing or contemplated, that would present a potential conflict of interest of an appearance of impropriety.

SECTION 13.16. **Offer and Acceptance.** It is expressly understood and agreed that this Agreement shall not constitute an offer or create any rights in favor of the Developer and shall in no way obligate or be binding upon the City nor shall it
have any force or effect until a fully executed original thereof is delivered by the City to the Developer.

SECTION 13.17. Further Assurances. Each party hereto shall from time to time execute, acknowledge and deliver such further instruments and perform such additional acts at no cost to such party as the other party may reasonably request to further effectuate or confirm the intent of this Agreement.

SECTION 13.18. Dispute Resolution. Any dispute concerning this Agreement, or the interpretation hereof, shall be set forth in a written notice to the other party hereto, and shall be resolved in the following manner:

(a) The dispute shall first be referred for non-binding discussion to a panel consisting of the Chief Administrative Officer of the City, a representative of the Developer and a neutral person selected mutually by the Chief Administrative Officer and the Developer representative, and shall be expeditiously resolved by such panel, if possible, by a majority vote. The notice of such dispute shall set forth the nature of the dispute and shall contain a position statement and copies of documents supporting the notifying party's position regarding the dispute. Within five (5) business days after receipt of such notice by the other party, the other party shall file its reply with position statement and supporting documents to the panel. Within five (5) business days after receipt of such reply, the panel shall review the matter and render a determination in writing ("Determination") to the parties. The panel may reach a Determination with or without a face-to-face meeting with the parties and with or without testimony of witnesses, in its sole discretion.

(b) If either party objects to the Determination, such party may have resort to a court located in the State of Connecticut having jurisdiction over the parties.

SECTION 13.19. Legal Relationship of Parties. The parties hereto shall be deemed and construed to be independent of one another for all purposes and nothing contained in this Agreement shall be deemed or determined to create a partnership or joint venture between them with respect to the parties' respective activities in connection with this Agreement.

SECTION 13.20. Taxes. The Developer shall pay promptly when due any and all real and personal property taxes with respect to the Property.

SECTION 13.21. Waste or Nuisance. The Developer shall not commit or permit waste to the Improvements on the Property nor shall it maintain, commit or permit the maintenance or commission of any nuisance, unsightly or unhealthy condition on or about the Property.
SECTION 13.22. **Time of the Essence.** Time is of the essence as to all of the Developer obligations under this Agreement where a date certain or time certain is specified.

SECTION 13.23. **Recording.** This Agreement shall be recorded on the Land Records of the City of Ansonia, and a complete copy thereof, with all Schedules, Exhibits and other attachments, shall be available for review and inspection at the City's Office of Economic Development, 253 Main Street, Ansonia, Connecticut 06401.

SECTION 13.24. **Duration.** This Agreement shall be in effect, unless otherwise terminated pursuant to the terms hereof, for the Enforcement Period, except for those obligations specifically stated to survive termination or expiration of this Agreement.

SECTION 13.25. **Agreement to Cooperate.** In exercising its rights and fulfilling its obligations hereunder, each party shall act in good faith and shall cooperate with each other to achieve the specific requirements of this Agreement.

SECTION 13.26. **Recitals.** The recitals set forth at the beginning of this Agreement are complete and correct in all material respects and are incorporated herein by reference.
IN WITNESS WHEREOF, the parties have executed this agreement on and as of the date first above written.

Signed, Sealed and Delivered
In the Presence Of:

__________________________________________

__________________________________________

Signed, Sealed and Delivered
In the Presence Of:

__________________________________________

CITY OF ANSONIA

By:  

David S. Cassetti
Mayor
Duly Authorized

PRIMROSE COMPANIES REALTY, LLC.

By:  

Its
Duly Authorized
ACKNOWLEDGEMENTS

STATE OF CONNECTICUT )
) ss.: Ansonia June _____, 2022
COUNTY OF NEW HAVEN )

Personally appeared, David S. Cassetti, Mayor, of the City of Ansonia, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, as such Mayor, and the free act and deed of the City of Ansonia, before me.

______________________________
Notary Public
My Commission Expires:
Commissioner of the Superior Court

STATE OF )
) ss.: 
COUNTY OF )

Personally appeared, ________________, ________________ of Primrose Companies Realty, LLC, a Connecticut corporation, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, as such ________________, and the free act and deed of Primrose Companies Realty, LLC, before me.

______________________________
Notary Public
My Commission Expires:
Commissioner of the Superior Court